

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

TROY PERTUSET,

Plaintiff,

v.

CIVIL ACTION NO. 2:16-cv-10554

MARGARET CLIFFORD,

Defendant.

ORDER

Before this Court are Plaintiff Troy Pertuset's ("Plaintiff") Complaint, (ECF No. 3), Application to Proceed Without Prepayment of Fees and Costs, (ECF No. 1). By Standing Order entered on January 4, 2016, and filed in this case on November 4, 2016, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and a recommendation for disposition ("PF&R"). (ECF No. 9.) On May 8, 2017, Magistrate Judge Tinsley entered an Order directing Plaintiff to file an amended complaint by June 8, 2017. (ECF No. 13.)

More than one year after the deadline set forth in the Order, Plaintiff still had not filed an amended complaint or otherwise participated in the litigation. Therefore, Magistrate Judge Tinsley entered a PF&R on June 21, 2018, recommending that this Court find that Plaintiff has failed to prosecute this civil action, dismiss the matter without prejudice, and deny as moot Plaintiff's application to proceed without prepayment of fees and costs. (ECF No. 16.)¹

¹ This Court notes that this action in part requests injunctive relief related to Plaintiff's incarceration at the Mount Olive Correctional Complex in Mount Olive, West Virginia. It does not appear that Plaintiff remains incarcerated in this facility, so the request for injunctive relief would be moot.

This Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Plaintiff's right to appeal this Court's order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a *de novo* review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

Objections to the PF&R in this case were due on July 9, 2018. (ECF No. 16.) To date, Plaintiff has failed to submit any objections in response to the PF&R, thus constituting a waiver of *de novo* review and Plaintiff's right to appeal this Court's order.

Accordingly, this Court **ADOPTS** the PF&R, (ECF No. 16), **DENIES** Plaintiff's Application to Proceed Without Prepayment of Fees and Costs, (ECF No. 1), and **DISMISSES** this action without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). This Court further **DIRECTS** the Clerk to remove this matter from this Court's docket.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 31, 2018



THOMAS E. JOHNSTON, CHIEF JUDGE